

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Review of the Commission's)

Rules and Policies)

Affecting the Conversion)

To Digital Television)

MM Docket No. 00-39

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF CORDILLERA COMMUNICATIONS, INC.

Cordillera Communications, Inc. ("Cordillera"), by its attorneys, hereby submits these comments in response to the FCC's *Notice of Proposed Rule Making* in its biennial review of rules and policies affecting the conversion to digital television ("DTV").¹ As the owner of 12 full power and numerous low power television stations, Cordillera has long supported the Commission's efforts to facilitate transition of the nation's television system to digital technology. By participating in this proceeding -- the Commission's first biennial review of its DTV rules -- Cordillera hopes to provide further support for the Commission's efforts to ensure a successful rollout of DTV throughout the United States.

I. THE COMMISSION SHOULD EXTEND THE DTV CONSTRUCTION DEADLINE FOR STATIONS IN MARKETS 100 AND HIGHER.

Cordillera urges the Commission to extend the DTV construction deadline for broadcasters in smaller markets -- particularly those in markets ranked 100 and above. In establishing its existing DTV construction schedule several years ago, the FCC explicitly acknowledged that small market broadcasters likely would need additional time to complete DTV construction. Given the significant DTV build-out delays that many large market

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broadcasters have experienced over the past two years, it is highly likely that small market broadcasters will experience the same types of problems. Moreover, small market stations face unique difficulties in implementing DTV service that will necessarily require additional build-out time and flexibility. Accordingly, these stations should be afforded an additional two years to commence DTV operations.

A. Extension of the Construction Deadline for Small Market Stations is Consistent With Prior FCC Policy.

The Commission has previously recognized that small market stations likely would need additional time to complete the DTV build-out. In its *Fifth Report and Order* in its earlier DTV proceeding,² the Commission wisely established a staggered schedule for stations to complete construction of their DTV facilities. Specifically, the Commission provided that affiliates of NBC, CBS, ABC and FOX (the “Big Four Networks”) in the top ten Designated Market Areas (“DMA”) would be required to complete construction by May 1, 1999, and that stations affiliated with the Big Four Networks in DMAs ranked 10 through 30 would be required to complete construction by November 1, 1999.³ All other television stations would be required to complete construction and commence DTV operations by May 1, 2002.⁴

The rationale behind adoption of this staggered schedule made complete sense. The Commission reasoned that it would be easier for large market stations to complete the DTV transition more quickly given their advertising revenues and access to investment capital.⁵ The

¹ *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Notice of Proposed Rule Making*, MM Docket No. 00-39 (rel. Mar. 8, 2000) (“Notice”).

² *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 12809 (“*Fifth Report & Order*”), on recon., *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, on further recon., *Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348 (1998), recon. dismissed, DA 99-1361, rel. July 12, 1999, recon. dismissed, FCC 00-59, rel. Feb. 23, 2000.

³ *Fifth Report & Order*, 12 FCC Rcd at 12840-41.

⁴ *Id.* at 12841.

⁵ *Id.* at 12842.

Commission further found that small market stations would benefit from the experience gained by large market stations early in the DTV transition, and as the DTV market continued to grow, small market broadcasters would possibly have lower equipment and implementation costs.⁶ The Commission's decision also made sense from a consumer perspective. Viewers in larger markets are more likely to embrace new technology such as DTV more quickly and purchase the more expensive earlier-generation DTV receivers than viewers in small markets.

B. Small Market Stations Will Need Additional Time to Plan and Construct Their DTV Facilities.

Almost three years have now passed since the FCC established its staggered DTV construction schedule and there are many DTV stations that have not met the FCC-established construction deadlines. As the Commission reported in its *Notice*, in the top thirty DMAs, only 75 of the 119 Big Four Network affiliates required to complete construction by November 1, 1999 or earlier are operating with DTV facilities. For those stations that are not yet on the air, construction has been delayed for any number of reasons, many of which are not even within a station's control. For instance, such stations continue to experience delays in equipment delivery. Others have been hindered by the availability of qualified tower crews; there are simply not enough qualified tower companies to service all broadcasters' DTV needs in the time frames prescribed by the Commission. Stations continue to experience delays in obtaining local zoning and permit approvals necessary to construct a new tower or to increase facilities at a particular site. Still other broadcasters have petitioned the FCC to amend the DTV Table of Allotments to specify a different channel than the one allotted by the FCC. The majority, if not all, of these petitions remain pending. Thus, these broadcasters too have been unavoidably

⁶ *Id.*

delayed in completing construction of their DTV facilities in accordance with Commission timelines.

One need not stretch the imagination to conclude that, of the remaining 1,195 television stations in the nation, many, particularly those in small markets, will face similar obstacles in completing construction of their DTV facilities. Equipment and tower crew availability and zoning delays are not particular to large markets or network affiliates only. Indeed, the obstacles likely will intensify because such a large group of broadcasters will be targeting the exact same deadline to commence DTV operations.

Given the likelihood of such delays and the unique challenges facing small market broadcasters discussed below, Cordillera urges the Commission to amend its staggered construction schedule to provide that stations in DMAs ranked 100 and over must complete construction by May 1, 2004, at the earliest. A blanket extension of the build-out deadline would provide these small market broadcasters with increased flexibility in structuring and implementing a sound business plan for delivering DTV to their viewers. Such stations also would enjoy greater leeway in scheduling the construction of DTV facilities, have more time to raise capital to invest in new DTV equipment, and have the opportunity to gain further experience with DTV technology.

The Commission noted in the *Fifth Report and Order* that one of its objectives in facilitating stations' implementation of DTV was

to promote broadcasters' ability to build digital businesses so that their valuable free programming service will continue. . . . We intend to give broadcasters flexibility in structuring business arrangements and attracting capital to build a successful DTV business.⁷

⁷ *Id.* at 12834.

In continuing its efforts to accomplish this objective, the Commission must take into account that small market broadcasters have very different business models and far fewer financial resources to implement them than their counterparts in large markets. Stations in rural areas do not (and indeed cannot) target their service to viewers in a large, centrally located geographic area. Rather, these stations provide service to viewers located in small pockets spread out across expansive territory. As an example, Cordillera's KRTV serves the entire DMA of Great Falls, Montana, ranked 185th in the country, which is geographically larger than the State of Pennsylvania (where there are six separate television DMAs). In addition, unlike their large market counterparts, rural stations rely heavily on translators and low power television stations rather than a single transmitting facility to reach their viewers. Indeed, 53% of KRTV's viewers receive the station's signal via translators and repeaters. Thus, providing DTV service to serve a small (in terms of population) yet huge (in terms of geography) market such as Great Falls, Montana, necessarily involves far different business planning than is required for a large market television station.

A rural station's DTV business model also carries an additional level of uncertainty that is simply not a factor in a large market station's business plan. Stations in rural and mountainous areas rely on translators to reach a substantial portion of their viewers. The FCC, however, has not established rules to govern the conversion of low power television and translator stations to digital technology and it is highly uncertain whether or when such rules will be adopted. Thus, rural stations not only must plan the construction of their main DTV facilities but they also must consider how to deliver their DTV signal to areas currently served by analog translators. It is no understatement to say that this presents a daunting task for broadcasters in rural and mountain areas who remain fully committed to providing DTV service to their existing viewers but simply

do not have all of the necessary technological and financial resources necessary to provide such service.

Cordillera is fully committed to rolling out DTV service on its stations. Applications for DTV construction permits or petitions for rule making are pending for each of Cordillera's stations, and Cordillera has undertaken extensive study of its existing television facilities to analyze the changes that will be needed to implement DTV. Based on these studies and accompanying cost estimates, however, Cordillera has determined that it would not be economically or practically feasible for the company to construct all of its stations with the facilities authorized in the DTV Table of Allotments by the May 1, 2002 deadline. For example, build-out of each of Cordillera's Montana stations with the facilities authorized in the DTV Table would require construction of a new tower and a complete rebuild of the power lines that feed the station's mountain top transmitter at a cost of approximately two million dollars per station. This figure does not take into account the significantly increased maintenance and utility costs Cordillera's stations also would have. For example, Cordillera estimates that the monthly power bill alone for each of its Montana stations would increase from approximately \$1200 per month to \$10,000 per month. Thus, given the significant capital investment required and the substantial increase in operational costs, Cordillera would not be able to complete construction of its allotted facilities within the next two years. Absent a blanket extension of the FCC's May 1, 2002 deadline, Cordillera will have no choice but to build the most minimal facilities permitted under the DTV rules. Clearly, this result serves no one – not Cordillera which is committed to providing full DTV service, not the FCC which expects both a timely and efficient DTV roll-out and certainly not the viewers, many of whom will be deprived of an over-the-air DTV signal.

Extending small market broadcasters' deadline for completing DTV construction also would not adversely impact the rate of receiver penetration. Small markets probably will not experience a high penetration in DTV receiver technology in the next two years. Indeed, recognizing that DTV penetration would not proceed rapidly, Congress extended the DTV transition period beyond 2006 for those communities that, generally, will have less than 85% market penetration by that date.⁸ Accordingly, the Congressional Budget office recently concluded that "[i]t now appears likely that the transition will extend beyond 2006 in most markets, with its ultimate end date uncertain."⁹ Finally, receivers and set-top boxes developed now will necessarily be more expensive than those that will be available later in the DTV transition. It is unlikely that consumers in small markets will be as willing to expend significant funds on DTV receivers until the technology has been tested successfully in larger markets. This will be particularly true for viewers who currently receive over-the-air television service via translator and would not be able to receive a digital signal even if such signals were available.

The Commission has the unique opportunity in this proceeding to evaluate the television industry's experience with DTV over the past two to three years and use that data to refine its rules to reflect more accurately the economic and technological realities of the DTV marketplace. Although Cordillera generally agrees with the Commission that the implementation of DTV should occur as rapidly as possible, Cordillera also believes that the need for a rapid conversion must be tempered in light of the daunting build-out requirements

⁸ 47 U.S.C. § 309(j)(14)(B).

⁹ *Completing the Transition to Digital Television*, Congressional Budget Office, Congress of the United States, at 1 (Sept. 1999). Industry predictions on DTV receiver penetration vary widely. For instance, in 1998, the Consumer Electronics Manufacturers Association predicted that 10 million U.S. households would own DTV sets by 2003. Lee Hall, *Not a Pretty Picture for HDTV, Study Says*, ELECTRONIC MEDIA, Dec. 14, 1998, at 4. Forrester Research, on the other hand, has concluded that only one million households would own receivers by that date. *Id.* More recently, the Consumer Electronics Association predicted that DTV penetration would reach 50% of U.S. TV households by 2006, assuming a "fast lane" approach consisting of 100% compliance by broadcasters with FCC

faced by small market broadcasters. Extending the DTV construction deadline until May 1, 2004 for stations in these markets would strike an appropriate balance between the need for a rapid roll-out and the importance of providing small market broadcasters with the opportunity to develop sound and viable plans for providing their viewers with DTV service.

II. THE COMMISSION SHOULD DELAY THE DEADLINE FOR SELECTING A PERMANENT DTV CHANNEL.

The Commission's *Notice* raises an important issue regarding the timing and process that will govern a television station's selection of the DTV channel on which it will operate permanently after the DTV transition concludes. Attempting to accommodate the needs of stations to gain significant experience with DTV service and to plan sufficiently in advance to move to a new DTV channel, the Commission has proposed that stations select their permanent DTV channel no later than May 1, 2004.¹⁰

Cordillera understands the importance of requiring broadcasters to select their permanent DTV channels by a date certain, but it believes that May 1, 2004 is far too soon for many broadcast stations to analyze fully whether they should move to a different DTV channel at the end of the DTV transition. Stations should be given full opportunity to collect DTV field data and to evaluate completely their DTV service over a sufficient period of time. Moreover, should the Commission adopt Cordillera's proposal to extend the DTV construction deadline for small market broadcasters until May 1, 2004, additional time beyond that date will be needed by such stations to gain practical experience with their DTV channel and technical facilities.¹¹

In short, while it is important that a broadcaster select a permanent channel by a specific deadline, it is equally if not more important that the decision be informed and based on sufficient

construction deadlines and aggressive airing of HDTV programming. *Broadcasters at NAB Press for Current DTV Standard*, AUDIO WEEK, Apr. 17, 2000.

¹⁰ *Notice* ¶ 38.

experience with DTV technology and operations. This will not be possible for many broadcasters unless the FCC postpones the DTV channel selection deadline past May 1, 2004.

III. FULL REPLICATION SHOULD NOT BE REQUIRED UNTIL THE END OF THE DTV TRANSITION.

Cordillera encourages the Commission to delay, until the end of the DTV transition, the requirement that DTV stations fully replicate their analog service. Cordillera recognizes that replication of service is a critical element to the success of DTV. However, as with selection of a permanent DTV channel, a decision to replicate existing service requires experience with and analysis of actual DTV operations. Many broadcasters simply will not be able to collect all of the data they need by the proposed May 1, 2004 deadline. And, by that date, many broadcasters may not have begun operation on or even selected their permanent DTV channel. Significantly, under the Commission's proposal, broadcasters would be required to replicate service on their temporary and permanent DTV channels. This result, however, would be practically and economically unsound for most broadcasters and does not appear to have any significant public interest benefit.

Finally, the process of full service replication will be particularly complicated for small market broadcasters in rural and mountainous geographic areas given that many of these stations currently use translators to provide much of their over-the-air service. Again, should the Commission adopt Cordillera's request for an extension of the construction deadline for small market stations, the additional time through the end of the DTV transition will be necessary for these stations to analyze their DTV operations and, if necessary, make appropriate permanent changes to their business plan before moving forward with full service replication.

¹¹ As an alternative, the Commission may wish to consider establishing a staggered channel election schedule that

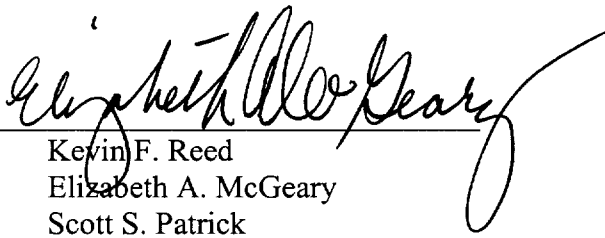
IV. CONCLUSION.

Cordillera is proud of its stations' longstanding service to the small television markets in the intermountain western regions of the nation and it fully intends to continue this service (both DTV and analog) well into the twenty-first century. Fulfillment of this objective, however, may be seriously hindered if the FCC unnecessarily restricts Cordillera's and other small market broadcasters' ability to develop and implement a viable DTV business plan that in the long term will benefit both stations and their viewing public. Accordingly, the FCC should provide stations in small markets with an additional two years in which to complete construction of their DTV facilities. Similarly, both the deadlines to select a permanent DTV channel and to replicate service should be delayed until 2006 subject to review in subsequent biennial proceedings.

Based upon the foregoing, Cordillera urges the Commission to adopt the proposals set forth herein.

RESPECTFULLY SUBMITTED,

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would be similar to the one adopted for the construction of DTV stations.